



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 22, 1998

Ms. Susan J. Barnett
Assistant District Attorney
County of Collin
Collin County Courthouse
210 S. McDonald, Suite 324
McKinney, Texas 75069

OR98-1719

Dear Ms. Barnett:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 116932.

The Collin County District Attorney (the "district attorney") received a request for the actual dollar amount spent for testing and analysis of evidence pertaining to a specific harassment case. The requestor also seeks an estimate of actual man hours expended by the district attorney, as well as costs associated with hiring outside consultants and experts to testify. You assert that the requested information is excepted from required public disclosure by sections 552.108 and 552.111 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted documents.

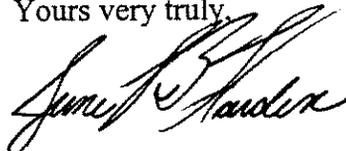
Initially, you claim that the information relating to the cost of testing and expert testimony is excepted under section 552.108. Section 552.108(b)(2) excepts from disclosure "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution...if...the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication." The document at issue reveals only inconsequential information relating to the resources used in the preparation of the test results. We believe such information only indirectly relates to law enforcement or prosecution and more directly deals with the expenditure and payment of public funds. Therefore, the district attorney may not withhold the requested information under section 552.108 of the Government Code.

You also seek to withhold this information under section 552.111. Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 (1993) at 5-6. In addition, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* at 4-5. After reviewing the submitted document, we have determined that the information is purely factual in nature. Therefore, the district attorney must release the information relating to the cost of testing and expert testimony.

You state that a record of the number of hours expended by the district attorney's office in the harassment case does not exist. The Open Records Act does not require a governmental body to obtain or create new information in order to comply with a request for information. Open Records Decision No. 534 (1989). We note, however, that a governmental body must make a good faith effort to relate a request to information which it holds and should advise the requestor of the types of information available. Open Records Decision No. 561 (1990).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

Ref.: ID# 116932

Enclosures: Submitted documents

cc: Ms. Jacque Hilburn
Courier-Gazette
P.O. Box 400
McKinney, Texas 75070
(w/o enclosures)